

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

DESMOND QUICK,

Plaintiff,

-v-

No. 9:12-CV-1717
(DNH/ATB)

HAROLD H. GRAHAM, Superintendent,
Auburn Correctional Facility,

Defendant.

APPEARANCES:

OF COUNSEL:

DESMOND QUICK
Plaintiff pro se
03-B-1945
Marcy Correctional Facility
P.O. Box 3600
Marcy, NY 13403

HON. ERIC T. SCHNEIDERMAN
Attorney General for the State of New York
Attorney for Defendant
The Capitol
Albany, NY 12224

DOUGLAS J. GOGLIA, ESQ.
Ass't Attorney General

DAVID N. HURD
United States District Judge

DECISION and ORDER

Pro se plaintiff Desmond Quick brought this civil rights action pursuant to 42 U.S.C. § 1983. On August 5, 2014, the Honorable Andrew T. Baxter, United States Magistrate Judge, advised by Report-Recommendation that plaintiff's motion for summary judgment be denied and defendant's cross-motion for summary judgment be granted and the second amended complaint be dismissed in its entirety. Magistrate Judge Baxter ordered that

plaintiff's motion for leave to file a third amended complaint be granted in part, with respect to defendants Graham and Christopher Mayer, but denied with respect to Anthony Annucci and Maureen Bosco. Magistrate Judge Baxter also granted plaintiff leave to further supplement his proposed third amended complaint as it pertained to an alleged admission by Christopher Mayer, and directed that plaintiff submit any supplement by August 19, 2014 for review.

Plaintiff timely filed objections to the Report-Recommendation. ECF No. 93.

Based upon a de novo review of the portions of the Report-Recommendation to which plaintiff objected, the Report-Recommendation is accepted and adopted in all respects. See 28 U.S.C. § 636(b)(1).

Following the issuance of the Report-Recommendation, plaintiff filed a motion to file a fourth amended complaint. ECF No. 88. This proposed amended complaint does not add Christopher Mayer as a defendant, although the Report-Recommendation permitted plaintiff to do so. Following receipt of this proposed amended complaint, Magistrate Judge Baxter communicated to plaintiff that his motion appears to reflect his decision to proceed in this action only against defendant Graham, and not to add Christopher Mayer as a defendant. Magistrate Judge Baxter advised plaintiff that if he did not intend to withdraw his motion to add Christopher Mayer as a defendant, he should so advise by August 29, 2014. No further submissions were received from plaintiff regarding his decision to proceed against only defendant Graham.

Plaintiff's proposed fourth amended complaint, against only defendant Graham, does however include allegations supporting a plausible claim that Graham was personally involved in the lighting conditions in the Residential Crisis Treatment Program for inmates not on suicide watch after June 2012 through early 2013. Based on the authority set forth in

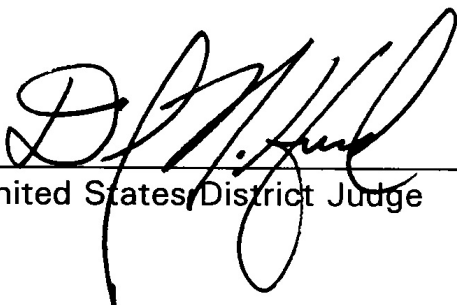
section I. C. of the Report-Recommendation, the Eighth Amendment claim against defendant Graham, as to the period after June 2012, will be permitted to go forward. Accordingly, plaintiff's motion to amend will be granted and the fourth amended complaint will be accepted for filing.

Therefore, it is

ORDERED that

1. Plaintiff's motion for summary judgment is DENIED;
2. Defendant's cross-motion for summary judgment is GRANTED and the second amended complaint is DISMISSED in its entirety;
3. Plaintiff's motion to file a fourth amended complaint is GRANTED and the Clerk is directed to accept plaintiff's proposed fourth amended complaint for filing;
4. This matter is referred back to Magistrate Judge Andrew T. Baxter for further proceedings consistent with this Decision and Order; and
5. The Clerk is directed to serve a copy of this Decision and Order upon plaintiff in accordance with the Local Rules and close the file.

IT IS SO ORDERED.



United States District Judge

Dated: September 11, 2014
Utica, New York.